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January 22, 2009

Timothy J. McElheran  
Superintendent of Schools  
Victor Central School District  
953 High Street  
Victor, New York 14564

Jack Marren  
Town Supervisor  
Town of Victor Town Hall  
85 East Main Street  
Victor, New York 14564

Geoffrey Astles  
County Administrator  
Ontario County Courthouse  
20 Ontario Street  
Canandaigua, New York 14424

**Re: Proposal Concerning Eastview Mall - Financial Assistance through Ontario County Industrial Development Agency**

Dear Sirs:

Our firm represents the Company, as defined herein. Eastview Mall, LLC, a duly organized and validly existing Delaware limited liability company, on behalf of Eastview Mall, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (“Eastview”), and Great Eastern Mall, L.P., a duly organized and validly existing New York limited partnership, on behalf of Great Eastern Mall, L.P. and/or an entity formed or to be formed on behalf of any of the foregoing (“GEM”; and, collectively with Eastview, the “Company”), have submitted an application to the Ontario County Industrial Development Agency (the “Agency”), in connection with the acquisition, renovation, improving and equipping of the existing approximately 743,643 square foot mall structures located on approximately 108.7 acres of land located at 7979 Pittsford-Victor Road, Victor, New York 14564 (more particularly known as a portion of Eastview Mall and encompassing the following tax map parcels: 6.000-1-12.100, 12.500, 3.500 and 12.800) in two phases: Phase 1 will occur over the next five to seven years and will consist of capital improvements and upgrades to the existing mall space, which improvements may include, but shall not be limited to, partial roof replacement; repaving of parking areas; HVAC replacements including an energy management system; and a variety of interior upgrades to attract higher sales tenants; and Phase 2 which is anticipated to commence in 2014 and may entail the acquisition of one or more tax map parcels together with further improvements to attract one or more signature retail tenants (collectively, the “Facility”), to be used by the

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Company as a destination retail center. The Facility currently encompasses the following tax map parcels: 6.000-1-12.100, 12.500, 3.500 and 12.800.

The Facility has produced ever increasing sales tax revenues for the Town and County, from \$1,080,000 in 1971 to \$9,218,750 in 2008 (see Tab F). As sales tax revenue rise, and Town and County property taxes levies are minimized, other growth in the Victor area has been encouraged leading to greater property tax payments to the Town, County, and School District. Eastview has grown through its history through cooperative arraignments with the community (see Tab G). We are looking to pursue further upgrades that impact sales per square foot in a proactive manner while minimizing any traffic impact. To remain upstate New York's premier destination center (see Tab A) we need to again partner with the community to pull together an attractive benefits package to induce tenants with higher per square feet sales to locate at Eastview Mall.

As a reminder, in 1995 we closed on a public/private partnership to address nearby blighted conditions and expand Eastview Mall under the 1995 agreements, a portion of the Facility (tax map parcel: 6.000-1-12.10) is currently subject to a Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 1994 (the "TIF PILOT"), between the Town of Victor and GEM, which TIF PILOT provides for the payment to the Town of Victor of payments-in-lieu-of-taxes equal to 100% of the taxes, service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which would be levied upon or with respect to such tax map parcel by the taxing jurisdictions if such tax map parcel were owned by GEM and not by the Town of Victor. The Town of Victor is directed, pursuant to such TIF PILOT, to apply the payments-in-lieu-of-taxes received thereunder as follows: (i) that portion of the payments which are the equivalent of any special ad valorem levies, special assessments or special charges shall be paid to the taxing jurisdiction assessing the same; (ii) that portion of the payments which are not in excess of the amount produced by multiplying the current tax rate for each taxing jurisdiction by the assessed value as shown on the assessment roll used by such taxing jurisdiction prior to February 8, 1993 shall be paid to taxing jurisdictions pro rata; and (iii) that portion of the payments which are in excess of clauses (i) and (ii) shall be applied by the Town of Victor to pay the debt service on the Tax Increment Financing Bonds (the "TIF Bonds") issued by the Town of Victor and any monies remaining after the payment of the debt service on the TIF Bonds shall be paid to the taxing jurisdictions in the same proportion as set forth in clause (ii) hereof (collectively, clauses (i), (ii) and (iii) hereof shall be the TIF PILOT Payments").

Today we are proposing a public/private partnership involving incentives already being used in other communities. The Company has applied to the Agency for a sales and use tax exemption and a mortgage tax exemption on both Phase 1 and Phase 2. The 2009 PILOT with the Agency would be as follows:

## **PHASE 1 - PROPERTY TAX AGREEMENT (see Tab C)**

The Company proposes to establish a fixed dollar amount to be paid under a new PILOT Agreement with the Agency (“2009 PILOT with the Agency”) for the benefit of the Town of Victor, Ontario County and Victor School District (the “Affected Tax Jurisdictions”) which would incorporate the TIF PILOT Payments and be paid as follows:

- (i) for the first five (5) tax years (which commence with the 2010 Ontario County/Town of Victor tax year and the 2009/2010 Victor Central School District tax year), payment-in-lieu-of-tax payments in each tax year will be equal to the amount of the Ontario County and Town of Victor 2009 tax year real property tax receipts and Victor Central School District 2008-2009 tax year real property tax receipts (collectively, the “Baseline PILOT Payment” – this agreement is meant to benefit the Affected Tax Jurisdictions by preventing any “deflation” in payments);
- (ii) for the 2015 Ontario County/Town of Victor tax year and the 2014/2015 Victor Central School District tax year, payment-in-lieu-of-tax payments will be in an amount equal to 102% of the Baseline PILOT Payment;
- (iii) for each tax year thereafter, payment-in-lieu-of-tax payments will be in an amount equal to the prior year’s payment-in-lieu-of-tax payment plus 2%; and
- (iv) the 2009 PILOT with the Agency would be for a term of thirty (30) years.

## **PHASE 2 - PROPERTY TAX AGREEMENT**

Pending receipt of a consent from each Affected Tax Jurisdiction in accordance with Section 858(15) of Article 18-A of the New York State General Municipal Law, the 2009 PILOT Agreement with the Agency will provide for an amount equal to the TIF PILOT Payments to be transferred solely to the Town of Victor for allocation by the Town of Victor as set forth above (unless the TIF Bonds are repaid) as well as contain provisions allowing the Agency and the Company to amend the 2009 PILOT Agreement with the Agency to provide for additional payments-in-lieu-of-taxes above the amounts described above (the “PILOT Increment”) with respect to the Facility which PILOT Increment shall not, subject to the next succeeding sentence, be remitted to the Affected Tax Jurisdictions, but shall instead be used to pay debt service on revenue bonds which may be issued by the Agency to finance Phase 2 of the Facility (“PIF Bonds”) or to pay costs of Phase 2 of the Facility, in each case, as approved by the Agency (collectively, the “Approved Uses”). To the extent that any portion of the PILOT Increment received in a tax year is not needed for Approved Uses, such balance of the PILOT Increment will be distributed pro-rata to the affected taxing jurisdictions. The 2009 PILOT Agreement with the Agency may also be amended concurrently with the amendment to effectuate the PILOT Increment to allow the Company, with the consent of the Agency, to add one or more adjacent tax map parcels thereto and to the definition of the Facility, which additional tax map parcel(s)

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will be subject to additional payments-in-lieu-of-taxes payable to the Affected Tax Jurisdictions in an amount equal to the then current tax year tax receipts for all affected taxing jurisdictions plus an additional 2% a year for each subsequent remaining year of the term of the PILOT Agreement, and which additional tax map parcel(s) may also be subject to PILOT Increment payments as set forth above. The 2009 PILOT Agreement with the Agency will limit the costs of Phase 2 of the Facility payable either from the proceeds of payments-in-lieu-of-taxes or the proceeds of PIF Bonds to \$25 million. The up to thirty-year term of the PILOT Agreement will coincide with the term of the Lease Agreement between the Agency and the Company.

### **INCENTIVE TO AFFECTED TAX JURISDICTIONS:**

We would propose to refinance the balance of the Town TIF Bonds when a closing occurs on Phase 2 such that the approximately \$1.1mm per annum currently used for debt service is distributed to the Affected Tax Jurisdictions. If the Phase 2 closing does not occur until after the Town TIF Bonds are repaid in full, the approximately \$1.1mm per annum currently used for debt service on the TIF Bonds would be distributed to the Affected Tax Jurisdictions. Based on current tax rates, this proposal increases school taxes by approximately \$770,000 once Phase 2 closes.

At your request, attached as **Tab E** is information confirming that the current assessment and related taxes at Eastview Mall are within the range of other Regional Malls in the area. You will note that Eastview (at \$77.06/sq. ft.) is at the midpoint between Greece Ridge at \$70.93/sq. ft. and Walden Galleries at \$84.10/sq. ft. of more consequence is the fact that Medley Center and Destiny Mall have existing agreements with their communities that place them at a competitive advantage. The success of Eastview Mall should be partially credited for the noticeable expansion of the tax base in the Victor area due to the ability of the Town and County to minimize tax increases and encourage growth based on ever growing sales tax receipts. By partnering with the community we hope to repeat our prior successes while competing for signature retail tenants in a very competitive industry. Please advise if you need any further valuation materials.

The 2009 PILOT Agreement with the Agency is necessary to allow the Company to fix its costs and establish the framework for the PILOT Increment financing which will allow the Company to maintain and enhance its competitive position in the region and attract significant retail tenants to Ontario County, New York. We would ask that the Victor School Board, Victor Town Board and County of Ontario consider passage of a resolution at your earliest convenience to enable us to proceed with this exciting project.

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Please advise if you have any questions or concerns.

Very truly yours,

Shawn M. Griffin

Cc: Michael Manikowski  
Katharine Baynes, Esq.  
Kristen J. Thorsness, Esq.  
Dennis Wilmot  
Kevin Wilmot